In the Supreme Court of the United States.

DECEMBER TERM, 1868.

THE STEAMSHIP GEORGIA, HER TACKLE, &c., Edward Bates, claimant, appellant,

vs.

THE UNITED STATES.

No. 42.

STATEMENT OF THE CASE.

The steamship Georgia was captured by the U. S. steamship Niagara, Commodore Craven, commanding, on the 15th day of August, 1864, off the coast of Portugal, about twenty-five miles west from Lisbon, and brought to New Bedford, Massachusetts, for adjudication as prize of war.

A libel in prize against the vessel was filed in the United States District Court for the district of Massachusetts on the 24th day of September, 1864, and on the 31st day of October, 1865, a claim for the steamship was interposed by Edward Bates, averring that he, the claimant, is a subject of Great Britain and the sole owner of said steamship; and that said steamship was at the time of capture a British vessel, and duly registered as such. (Rec., p. 4.) A test affidavit of the claimant was filed on the 31st of January, 1865, which avers that at the time of said capture and long

before, and at the time of making said affidavit, the claimant, a subject of Great Britain and extensively engaged in navigation, was the sole owner of said steamship, and had chartered the same to the Portuguese government on a voyage to Lisbon, in Portugal, and thence to the Portuguese settlements on the coast of Africa, and that said steamship was captured on her said voyage to Lisbon. (Rec., p. 5.)

Both parties, by mutual consent, exhibited further proof, the larger part of which was by depositions taken on interrogatories and cross-interrogatories.

As part of his further proof the claimant produced the bill of sale for the steamer, executed on June 11, 1864, by James Dunwody Bulloch, "as agent for the government of the Confederate States of America," (Rec., p. 85,) together with all other documents and correspondence relating to the purchase of the vessel and the voyage on which she was captured.

On September 26, 1866, a decree was entered condemning said steamship, her tackle, &c., it appearing "that said steamer Georgia had been an armed vessel, set forth as a vessel of war, and used as such by enemies of the United States, and had been the property of certain persons to the court unknown, who were permanent inhabitants of, and residents in, a part of the territory of the enemies of the United States, and who were acting as the government and public authorities of said enemies, and that the steamer Georgia was and is to be decreed and held to have been at the time of her capture still the property of enemies of the United States, and liable to capture and condemnation as such." (See decree, rec., p. 146.)

From this decree the claimant has appealed to this court.

FIRST POINT.

As matter of fact it clearly appears from the proof, preparatory and supplemental in this record, that the steamer Georgia, before and at the time of the alleged purchase by the claimant, was a public armed vessel of the rebel enemies of the United States in the late civil war.

1. This proposition of fact, it is admitted by the appellant, is fully established, if the depositions, which appear to have been taken in the way of further proof on behalf respectively of the United States and of the claimant, are admissible testimony in this court, and may be considered on the hearing of the present appeal. (Appellant's brief, pp. 4, 5.)

The counsel of the appellant have given in their brief a statement of the facts which they regard as established by this further proof; and inasmuch as the character of the vessel as a public ship of war, owned by the insurgent enemies of the United States, and employed in their naval service, which, we contend, as matter of law, interposed an absolute bar to any transfer of title to the claimant as against the United States, is fully admitted by the counsel, we do not propose to controvert, at present, the exposition of the particular facts of the case, which is presented on the part of the appellant.

As part, however, of the history of this vessel, disclosed by the public records of the late war, we deem it proper to direct the attention of the court to the correspondence in relation to the transactions mentioned in the record, between Mr. ADAMS and EARL RUSSELL and Mr. ADAMS and Mr. SEWARD, communicated with the President's Messages to the first and second sessions of the 38th Congress.

MR. ADAMS to EARL RUSSELL, APRIL 8, 1863; DIPLOMATIC CORRESPONDENCE, 1863, PART 1, PAGE 199.

LORD RUSSELL to MR. ADAMS, APRIL 21, 1863; IBID, P. 225.

MR. ADAMS to MR. SEWARD, MAY 5, 1864; DIPLOMATIC CORRESPONDENCE, 1864, PART 1, P. 724.

MR. ADAMS to EARL RUSSELL, MAY 9, 1864; IBID, P. 734.

MR. ADAMS to EARL RUSSELL, JUNE 7, 1864; DIPLOMATIC CORRESPONDENCE, 1864, PART 2, P. 100.

MR. ADAMS to MR. SEWARD, AUGUST 18, 1864; IBID P. 277.

MR. ADAMS to MR. SEWARD, AUGUST 25, 1864; IBID, P. 289.

EARL RUSSELL to MR. ADAMS; SEP. 6, 1864; IBID, P. 298.

MR. SEWARD to MR. ADAMS; SEP. 20, 1864; IBID, P. 306.

It may also be here pertinently mentioned as a fact in the history of this vessel, that after her capture an action was brought by the present claimant upon the policy of insurance, found in the record, and which was brought in on further proof, and that a verdict for the underwriters was sustained by the judges of the Court of Queen's Bench. This judgment, as appears by the report of the case, went upon the ground that the fact that this vessel had been a ship of war in the Confederate service, and was therefore exposed to the danger of capture, was a material circumstance,

which the claimant had not properly communicated to the underwriters before the execution of the policy.

BATES *v.* HEWITT, LAW JOURNAL REPORTS, 1867; VOL. 45, P. 2; COMMON LAW, P. 282.

2. But the appellant, it should be here observed, in point 11 of the brief, asks this court to disregard and exclude from its consideration *all* the depositions in the record which follow the preparatory examinations of the two witnesses from the captured vessel, upon the ground mainly that the record does not show that any order for further proof was granted by the District Court. This objection, we understand from the brief, goes not only to the depositions taken on behalf of the United States, but also to those taken by the appellant himself.

We think, however, that this court is entitled to look into all the proofs found in the record; for the record is manifestly insensible unless the fact was that these depositions, by way of further proof, were taken and introduced into the cause by the agreement and consent of the parties. This was undoubtedly the case.

We turn to the record:

(*a*) It shows that the depositions of Timothy G. Canty, John Stanley and Charles Thompson, on behalf of the United States, were taken upon "special interrogatories and cross-interrogatories propounded by the counsel of the *respective parties.*" (Rec., pp. 43. 63.)

This proves, of course, that the claimant consented to the taking of these depositions. And as to the objection made here by the counsel of the appellant in this court, (who were not the counsel below,) that it does not appear that these witnesses were sworn, nor before what officer, or when or where they were taken, it is sufficient to say that the court will presume, inasmuch as the record *expressly* states that the witneses

were sworn and examined that the examination occurred before the proper officer of the court, the Prize Commissioner.

(*b*) Then come the depositions in the record for the *claimant*, the first of which is that of Edward Bates himself. (Rec., pp. 63 to 140.)

It would certainly seem that it does not lie in the mouth of the claimant to object to the consideration of this evidence. It was taken and introduced into the cause by himself, with the consent of the United States. Without such full exposition of the nature and circumstances of the transactions connected with this vessel and voyage, the claimant knew perfectly well he could not expect to receive restitution at the hands of the Prize Court.

The deficiencies of the preparatory evidence, and the absence from the vessel of the bill of sale and the policy of insurance, rendered the case, at the outset, one for close scrutiny; and, in the common course of practice, the Prize Court would have ordered at once, in the exercise of its discretion, the bringing in of the bill of sale and other papers connected with the vessel and the voyage. (Dana's Wheaton, 180, note 186.) The necessary evidence was introduced accordingly by the claimant, with the consent of the government, without a formal order of allowance of further proof by the court.

But if the proof of the United States is thrown out of view by this court, the same disposition must be made of that taken on behalf of the claimant. If the claimant's proof is retained and considered, that of the United States must also be considered. They both stand on the same footing in the record, that is of evidence taken and introduced by mutual consent of the parties to the cause.

3. If the court, however, should conclude that the depositions referred to are not properly a part of this record, we will contend that the claimant cannot receive restitution without further proof, and should be required by the order of this court to give such proof; and we will also ask for leave to introduce, on behalf of the government, in this court, the evidence of the witnesses who were examined below for the United States.

SECOND POINT.

It thus appearing that this steamer was a public vessel of war of the insurgent enemies of the United States, the claimant's purchase in the neutral port of Liverpool was illegal, and he acquired thereby no title to the vessel as against the United States.

The French rule of public law, and, perhaps, that of other nations of Continental Europe, treats every purchase, in time of war, by a neutral, of an enemy's vessel, whether public or private, as illegal.

Lebeau, Nouveau Code des Prises, tom II, p. 342.

Pistoye et Duverdy, Traité des Prises Maritimes, tom I, p, 1.

Hautefeuille, Droits et Devoirs des Nations Neutres, tom 41, p. 75.

The general rule of prize law, as administered in the English courts, however, is that the title of a neutral vendee to a vessel sold by the enemy in time of war, is valid where the property is *bona fide*, and absolutely, transferred so as to divest the enemy of all future interest in it.

The Sechs Geschwistern, 4 Rob., 101.

The Johanna Emilia, 29 E. L. & E., 562.

9 Moore's Privy Council Cases, 119.

Some difficulty has always been felt by the prize courts in sustaining the validity of the purchase of an enemy's merchant vessel sold in a neutral port, to which she had been driven, and from which she could not escape. But Sir Wm. Scott states, in his opinion in the case of *the Minerva*, that such purchases have been sustained "after much discussion and some hesitation of opinion." (6 Rob., 399.)

But to this general rule there are several quite, as well recognized *exceptions* in the English prize law.

The *first* is, that effect will not be given to a sale of an enemy's ship in *transitu*. In such a case the court will not examine the question of *bona fides*, but will treat the fact of sale as conclusive evidence of *mala fides*.

The Danckebaar Africaan, 1 Rob., 112.

The Herstelder, 1 Rob., 115.

The *second* exception seems to be, that the purchase of an enemy's vessel by a neutral in a *blockaded port* is illegal.

The General Hamilton, 6 Rob., 61.

The Vigilantia, 6 Rob., 124.

The Potsdam, 4 Rob., 89.

A *third* exception arises in the case of an enemy's *ships of war*, the purchase of which, by neutrals, is held to be illegal.

The Minerva, 6 Rob., 396.

This decision of Lord Stowell is, by the common interpretation, and in the general understanding of English and American writers on the public law, regarded as adjudicating the naked proposition, that the title of a neutral vendee to an enemy's vessel of

war, acquired by purchase in a neutral port, cannot be regarded as having any validity in an English prize court, unless such purchase occurred with the previous acquiescence and consent of the government.

2 Wheaton, Appendix, p. 30.
Lawrence's Wheaton on Int. Law, 581, note.
3 Phillimore on Int. Law, 608.
2 Wildman's Int. Law, 90.
Hazlitt & Roche, 209.

The adjudication in the case of the MINERVA was carefully considered by the learned judge of the District Court of New Jersey in the case of the SCHOONER ETTA, a public vessel of the Confederate Government, which was sold as unseaworthy, after being stripped of her armament, at public auction at Nassau, and purchased by British subjects, and subsequently transferred her, for a full consideration, to other British subjects, who were the claimants in the District Court, where she was libelled under the act of August 6, 1861.

Judge Field, after referring to the case of THE MINERVA, says:

"We have, then, the highest legal authority, both in England and this country, for the doctrine that the purchase by a neutral of an enemy's ship of war is illegal. When Lord Stowell and Judge Story agree upon a question touching belligerent rights and neutral responsibilities, he must be a bold man that would venture to differ. But the doctrine is sustained by reason as well as by authority. And perhaps no case could furnish a better illustration of the wisdom and propriety of the rule than the one now under consideration. Here is an armed vessel in the service of the Confederate States, which, after preying upon our commerce with a

boldness and success which almost commands admiration, takes refuge from the vigilance of our cruisers in the neutral port of Nassau. Deterred from venturing out for fear of capture, she is stripped of her armament, purchased by a citizen of Nassau, obtains a British register under a new name, clears for a neutral port, and then endeavors to run the blockade and make her way back to a hostile port, where she may be repaired and refitted as a vessel of war, and again sally forth upon a new career of plunder and depredation. A vessel under such circumstances cannot be a legitimate subject of commercial speculation. A neutral who purchases her, whatever may be his motives, does it at his peril. *He may design to devote her to peaceful commerce, but the warlike character once impressed still adheres to her. He may call her the Etta, but she is still the "Retribution," and by that name will be known and remembered."*

(United States *vs.* The Etta, district of New Jersey 1865, p. 84.)

It is believed, although we are not able, at present, to verify the statement, that the British Secretary for Foreign Affairs expressed his satisfaction with the judgment in the case of the Etta, in a correspondence which afterwards occurred in relation to that case, on the ground of its agreement with the decision of Lord Stowell, in the leading case of the Minerva.

2. The counsel of the appellant have attempted, in their brief, to distinguish the case at bar from that of the Minerva; but it must be clear to any one who reads the judgment of Lord Stowell, that he intended to lay down, as a rule of decision, the explicit doctrine, that a sale by a belligerent of his vessel of war to a neutral, in a neutral port, could not operate to transfer the title of the property as against British

right of capture, independently of any circumstances tending to show fraud or collusion in the particular transaction. Indeed the counsel admit that this great Judge did, in fact, assume to place the decision in the Minerva upon the abstract ground of the illegality of such a purchase, though they think he did so "quite unnecessarily." This, however, is a critical view of that celebrated judgment, which we shall not contest.

Lord Stowell undoubtedly intended to say, and did say, in the Minerva, that an enemy's vessel of war, lying in a neutral port, was not an object fairly within the range of commercial speculation, and he unquestionably intended to place his judgment of condemnation as well upon this principle, as upon the independent view that, upon the special facts of that case, the purchase was collusive, and had been made with the intent to convey the vessel into the possession of the former belligerent owner. "Whether," he says, "the purchase of a vessel of this description, built for war, and employed as such, and now rendered incapable of acting as a ship of war by the arms of the other belligerent, and driven into a neutral port for shelter; *whether the purchase of such a ship, I say, can be allowed, which shall enable the enemy so far to rescue himself from the disadvantage into which he has fallen, as to have the value at least restored to him by a neutral purchaser, is a question on which I shall wait for the authority of the Superior Court, before I admit the validity of such a transfer.* THAT A PRIVATE MERCHANT COULD LAWFULLY DO THIS I SHALL NOT HOLD, TILL I AM SO INSTRUCTED BY THE SUPERIOR COURT."

It is further to be observed, in respect to this case, that the claimant of the *Minerva* was a *second* vendee; the vessel having been sold by the Dutch East India Company to certain private parties, on whose account she continued in the port of Bergen. It was from *these persons* and not from the government of Holland, or any public company, that Count Bentinck, the claimant, purchased the Minerva.

The judgment of Lord Stowell, in effect, ruled that no title passed either by the first or the second sale of the vessel as against the British captors. There seems to have been no suspicion of fraud attached to the first transaction. It was treated, however, as having no validity whatever, and as inoperative to transfer the ownership from the Dutch government to the private neutral vendees.

Nor does anything in the report of this case negative the inference that the purchasers from the East India Company were persons residing in Bergen.

THIRD POINT.

Independently of any supposed or actual authoritative adjudication of the question involved in this case, we contend, if a rule of decision is now for the first time to be made touching the validity of such a sale as this, that, in view of the character and history of this vessel, the circumstances which surrounded her in the port of Liverpool, and the relations of that port and other British ports to the maritime belligerency of the late insurgent States, the court should, upon principle, pronounce the purchase of the Georgia by this British claimant absolutely null and void, as against the United States.

A few days after the return of the Georgia to Liverpool, our minister at London wrote to the Secretary of State as follows :

"The steamer Japan, latterly known as the Georgia, made her appearance in the Mersey on the evening of the 1st inst. I have no doubt that her whole outfit and expedition have proved an expensive failuae. *An endeavor will be made to convert the sums absorbed in her to some more effective object.*"

Mr. Adams to Mr. Seward, May 5, 1864.

In a subsequent letter, the American minister states

the object to which he supposed the proceeds of her sale would be applied:

"The proceeds of the respective sales of the Georgia, the Glasgow ram, and these (the Laird) iron-clads will be, probably, applied to the outfit of the four vessels now in process of construction in France."

Mr. Adams to Mr. Seward, May 26, 1864.

This correspondence presents the situation of this vessel on her return to Liverpool, and the motive, the object and the effect of the sale now in question. Driven back to this neutral port, the enterprise having proved a failure, and the vessel no longer of use to her insurgent owners, they are enabled to convert her into British gold, and by this means supply the outfit of other vessels constructing in France. Does the law of nations permit a neutral thus to rescue a hard-pressed enemy from the peril of his situation? Does it require a prize-court of the belligerent, thus robbed of the just fruits of his success, to ratify by its decree this unneutral interference in the contest? We submit that the law of nations permits and requires no such thing.

For what would have happened if this sale of the Georgia had not been effected?

On May 9, 1864, Mr. Adams addressed a remonstrance to Earl Russel to the following effect:

"I learn that she, (the Georgia,) is about to remain for an indefinite period, the men having been discharged. I scarcely need to suggest to your lordship that it has become a matter of interest to my government to learn whether this vessel assumes the right to remain in virtue of her former character, or, if received in her later one, why she is permitted to *overstay the period of time specified by the terms of her Majesty's proclamation.*"

This inquiry was induced no doubt by the tenor of her Majesty's instructions of January, 1862, relative to the ships of either of the belligerents, which au-

thorized these vessels to remain only twenty-four hours, except in case of stress of weather or necessary repairs, when it was permissible for them to remain not longer than twenty-four hours after the completion of the repairs.

The sale of the vessel, rendered action by the British government upon this remonstrance, unnecessary. If the sale had not occurred, it is but just to Great Britain, to presume that the Georgia would have been ordered to leave Liverpool. Her capture, in that event, would have been inevitable. We submit that under the law of nations, an enemy's public vessel, in such a situation, cannot be saved to her owners by a sale; and that the law of nations cannot be charged with the inconsistency of prohibiting a neutral from permitting the use of his territory by a belligerent as an asylum for his vessels of war, and, on the other, of suffering the sale of such vessels within neutral protection, by which the same advantage may be gained by the belligerent as if he had a perfect and absolute right to employ the neutral territory as a place of safe resort and permanent refuge from his successful enemy and the casualties of war.

This would seem, indeed, to have been the view of the British government itself, when it directed that thereafter no "ship-of-war of either belligerent shall be allowed to be brought into any of her majesty's ports for the purpose of being dismantled or sold."

Earl Russell to Mr. Adams, August 8, 1864.

The able and accomplished statesman who conducted the correspondence with the British government relative to this vessel, and who fortunately represented this government at London during the whole period of the civil war, was firmly of opinion, and upon this assumption carried on his negotiations, that every sale in a British port of a rebel war vessel was invalid and incapable of transferring the title of the

property to the neutral purchaser. Mr. Adams accordingly, upon receiving information of the sale of the Georgia to the claimant, addressed a communication to the respective commanders of the three United States vessels then cruising in the channel, the Niagara, the Kearsarge and the Sacramento, advising them of his "opinion that the Georgia might be made lawful prize whenever and under whatever colors she should be found sailing on the high seas."

Mr. Adams to Mr. Seward, August 18, 1864.

He had previously, in his correspondence with reference to the rebel vessel Sumter, transferred to a British subject at Gibraltar, discussed this subject at considerable length, citing the authority of Sir Robert Phillimore, and the practice of England during the Russian war, in refusing to recognize the transfer of any vessel of Russia in a neutral port.

Mr. Adams to Lord Russell, March 14, 1863.
Same to same, April 22, 1863.

FOURTH POINT.

But if the court should hold that the claimant could acquire a valid title to this vessel by purchase from the rebel government, we contend that the claimant has not shown by proper evidence that the agent of that government who executed the bill of sale was legally authorized to sell and transfer the steamer.

The record contains no evidence whatever proving the character of Bulloch, as the agent of the rebel government to effect a sale of this vessel. This must be affirmatively established by the claimant.

The Argo, 1 Rob., 159; the Bernon, 1 Rob., 103; 3 Wildman, Int. Law, 90.

FIFTH POINT.

The court should reject the claim here presented, pronounce the asserted title of the claimant of no validity, and condemn the vessel as the property of enemies of the United States.

WM. M. EVARTS,
Attorney General.
J. HUBLEY ASHTON,
Ass't Attorney General.

SUPPLEMENT.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
LONDON, *April* 8, 1863.

MY LORD: From information received at this legation, which appears entitled to credit, I am compelled to the painful conclusion that a steam vessel has just departed from the Clyde, with the intent to depredate on the commerce of the people of the United States. She passed there under the name of the *Japan*, but is since believed to have assumed the name of the Virginia. Her immediate destination is the island of Alderney, where it is supposed she may yet be at this moment. A small steamer called the Allar, belonging to New Haven, and commanded by Henry P. Maples, has been loaded with a large supply of guns, shells, shot, powder, &c., &c., and is either on the way or has arrived there. It is further alleged that a considerable number of British subjects have been enlisted at Liverpool, and sent to serve on board this cruiser.

Should it be yet in the power of her Majesty's government to institute some inquiry into the nature of these proceedings in season to establish their character if innocent, or to put a stop to them if criminal, I feel sure that it would be removing a heavy burden of anxiety from the minds of my countrymen in the United States.

I pray your lordship to accept the assurances of the highest consideration, with which I have the honor to be, my lord, your most obedient servant,

CHARLES FRANCIS ADAMS.

Right Hon. EARL RUSSELL, *&c., &c., &c.*

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, May 9, 1864.

MY LORD: Information has been received at this legation of the arrival, at Liverpool, in the night of 1st May, of the steamer formerly known as the *Japan*. This is the same vessel which, whilst registered and held in the name of Thomas Bold, a British subject, residing at Liverpool, was armed and equipped from this kingdom, and proceeded to depredate upon the commerce of the United States by burning and destroying several merchant ships. I had the honor to call your lordship's attention to this subject in my note of the 7th July, 1863.

It now appears that this vessel, having assumed the name of the *Georgia*, and the character of an armed ship of the insurgents of the United States, has returned to Great Britain, at Liverpool. In what character she has been received I have not yet been informed. I learn that she is about to remain for an indefinite period, the men having been discharged. I scarcely need to suggest to your lordship that it has become a matter of interest to my government to learn whether this vessel assumes the right to remain, in virtue of her former character, or, if received in her later one, why she is permitted to overstay the period of time specified by the terms of her Majesty's proclamation. As she appears to have come directly from a port on the coast of France, this apparent intention to lay up would seem to be the more extraordinary.

I cannot but infer, from the course previously adopted towards the armed vessels of the United States, that any such proceeding, if taken by one of them, would have been attended with an early request from your lordship to myself for an explanation.

As some time has now elapsed since the arrival of this vessel, without the appearance of the smallest interruption of her operations, I have felt it my duty, in advance of the possibility of receiving instructions from my government, not to omit to make this representation on its behalf.

I pray your lordship to accept the assurances of the highest consideration, with which I have the honor to be, my lord, your most obedient servant,

CHARLES FRANCIS ADAMS.

Right Hon. EARL RUSSELL, *&c., &c., &c.*

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, June 7, 1864.

MY LORD: I have received from the consul of the United States at Liverpool information which leads me to believe that a transfer, purporting to be a sale, has been made of the steamer heretofore known as the Japan, alias the Georgia, by the insurgents or their agents at that port.

In such a contingency, I must pray your lordship's pardon if I take the liberty to renew, in this case, the observations which I had the honor to submit in my note of the 14th of March of last year, on the case of the steamer Sumter, alias the Gibraltar. On behalf of my government I feel it my duty, in consonance with the practice heretofore adopted by Great Britain, to decline to recognize the validity of the sale of this armed vessel, heretofore engaged in carrying on war against the people of the United States in a neutral port, and to claim the right of seizing it wherever it may be found on the high seas.

I pray your lordship to accept the assurances of the

highest consideration, with which I have the honor to be, my lord, your lordship's most obedient servant,

CHARLES FRANCIS ADAMS.

Right Hon. EARL RUSSELL, *&c., &c., &c.*

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, July 27, 1864.

MY LORD: I have the honor to submit to your consideration a copy of a letter just received by me from the vice-consul of the United States at Liverpool.

It would seem, if the statements therein have any foundation in truth, that further attempts are in contemplation, under the shelter of the names of British subjects, to carry on from British ports war with the people of the United States.

Deeply regretting the continued manifestation of this inimical temper, I feel it again my duty to call your lordship's attention to the abuse thus made by the insurgents of the neutrality of her Majesty's harbors, by sham transfers of their war vessels to British subjects, the better to cover their hostile operations.

I pray permission to observe that the complaint thus made is not against the vessel, for I have already been compelled to apprise your lordship of the fact that my government declines to recognize her as possessing any other character than that which she had assumed, and in which she was received when she came into Liverpool. The material point to which I beg your lordship's attention is the intervention of one or more British subjects in the war, by taking all the necessary measures in British ports to send out in their name this vessel in a shape fitted for further hostile operations.

I pray your lordship, &c., &c., &c.

CHARLES FRANCIS ADAMS.

The Hon. EARL RUSSELL, *&c., &c., &c.*

Earl Russel to Mr. Adams.

FOREIGN OFFICE, *August* 8, 1864.

SIR: With reference to my letter of the 28th ultimo, I have the honor to state to you that her Majesty's government do not see any sufficient grounds for coming to the conclusion, upon the statement contained in your letter of the 27th ultimo, that the steamer Georgia is about to be again used for belligerent purposes. With a view, however, to prevent the recurrence of any question such as that which has arisen in the case of the Georgia, her Majesty's government have given directions that in future no ship of war of either belligerent shall be allowed to be brought into any of her Majesty's ports for the purpose of being dismantled or sold.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

RUSSELL.

CHARLES FRANCIS ADAMS, Esq., *&c.*, *&c.*, *&c.*

Mr. Adams to Mr. Seward.

No. 761.] LEGATION OF THE UNITED STATES,
London, August 18, 1864.

SIR: In connection with No. 758, of the 4th instant, on the subject of the sale of the steamer Georgia, I now forward a copy of Lord Russell's reply of the 8th instant to my note to him, a copy of which was transmitted with that despatch. It appears from this that the British government has become so much perplexed by the inconsistencies in which a toleration of *this new mode* of abusing their neautrality is involving them, as to decide upon a rule prohibiting all transfer or dismantling of belligerent vessels of either party in their ports. This is very well as far as it goes. The exclusion, though applying equally to us,

is nominal in that case, whereas it will have its force in circumscribing the operations of the sympathizers with the rebels, particularly in the port of Liverpool.

The causes which may have led to this decision are perhaps to be thus explained: Simultaneously with my note to Lord Russell, I addressed a circular to the respective commanders of the three war vessels at that time cruising in the channel, the Niagara, the Kearsarge and the Sacramento, apprising them of the information which I had received from Mr. Wilding, as well as of my opinion that the Georgia might be made lawful prize whenever and under whatever colors she should be found sailing on the high seas.

It turned out that the Georgia had been engaged by the Poruguese government for one month, at the price of a thousand pounds, to carry the mails from Lisbon to their African possessions. She was, however, to be transferred from Liverpool to that port on the responsibility of Mr. Bates, the nominal owner, and under British colors. The Count Lavradio, the Portuguese minister, on learning the precise state of the case, interposed no objection to my proceeding, but simply expressed a hope that, if captured at all, the vessel might be taken before reaching Lisbon to enter upon the engagement. I have no doubt, although I do not know it from information, that the matter has been brought to the attention of the British government by parties at Liverpool, with a view to secure its protection. The diffiulties that might ensue from adopting any positive course doubtless led to that decision which is found communicated in his lordship's note.

I have the honor to be, sir, your obedient servant,

CHARLES FRANCIS ADAMS.

Hon. WILLIAM H. SEWARD, *&c.*, *&c.*, *&c.*

[ENCLOSURES.]

1. Lord Russell to Mr. Adams, August 8, 1864.
2. Mr. Adams to Lord Russell, August 18, 1864.

Mr. Adams to Earl Russell.

LEGATION OF THE UNITED STATES,
London, September 8, 1868

MY LORD: I have the honor to acknowledge the reception of your lordship's note of the 6th instant, in relation to the capture of the steamer Georgia. Although I have every reason to believe that the strongest disposition already exists on the part of my government to facilitate the necessary proceedings before the proper judicial tribunals, whereby to determine the validity of that capture, according to the recognized principles of international law, I shall nevertheless take pleasure in at once transmitting a copy of your note expressing the wishes of her Majesty's government for their consideration.

I pray your lordship to accept the assurances of the highest consideration, with which I have the honor to be, my lord, your most obedient servant,

CHARLES FRANCIS ADAMS.

Right Hon. EARL RUSSELL, *&c.*, *&c.*, *&c.*